In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-214

CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE; UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; FERNANDO E. C. DE BACA, DIRECTOR OF REGION NINE OF UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; JOHN F. RICHARDSON, COMMISSIONER OF REGION NINE OF THE SOCIAL SECURITY ADMINISTRATION; SOCIAL SECURITY ADMINISTRATION,

Appellants

—v.—

CONCETTA SALFI AND DOREEN A. KALNINS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

INDEX TO APPENDIX

	Page
Docket Entries	1
In the United States District Court for the Northern District of California:	
Order Granting Leave To Proceed In Forma Pauperis	6
Complaint	7
Notification and certification from the district court to the court of appeals that a three-judge court is required	23
Order appointing three-judge court and naming members of the panel	24

Page

In the United States District Court for the Northern District of California:—Continued

Plaintiffs' motion for preliminary injunction 26

Stipulation to have case heard on cross-motions for summary judgment 29

Plaintiffs' motion for summary judgment 31

Plaintiffs' motion to consolidate hearing on the preliminary injunction with trial on the merits 33

Defendants' motion to dismiss or for summary judgment 34

Defendants' motion for stay of enforcement of judgment and for reconsideration 36

In the Supreme Court of the United States:

Temporary stay order of Mr. Justice Douglas entered June 21, 1974 38

Order noting probable jurisdiction 39

DOCKET ENTRIES

Date		Proceedings
1973		
Oct 19	1.	Filed Order Granting Leave to Proceed in Forma Pauperis. RFP
	2.	Filed Complaint for review of Adm Action.
	3.	Filed Order for service other than by U. S. Marhal (Don B. Kates Jr.)
	4.	Filed order for service other than by U. S. Marshal (Jeanne Pritchard)
	5.	Filed Memo of points and auths in support of Application for preliminary injunction.
	6.	Filed summons on ret exec 10-19-73.
Oct 24	7.	Filed Supplemental return on service.
Nov 19	8.	Filed notification & certification from Dist Court to 9th CCA req. 3 Judge Court
Nov 27	9.	Filed ord appointing 3 Judge court, Judge James R. Browning, 9th CCA ACW S.F. Cal 94104, Judge Albert C. Wollenberg, 450 Golden Gate Ave, San Francisco, Calif. 94102; Judge William G. East, 1065 High Street, Eugene Oregon 97401. A copy of the complaint has been mailed to each of the above named judges.
Dec 17	10.	Filed Pltfs mo for preliminary injunction.
Dec 27	11.	Filed notice that hrg pltfs mo for preliminary injunction for Feb 8 1974 @2 p.m. CTRmm 7.
1974		
Jan 29	12.	Filed Defts' memo in opposition to the Pltfs mo for preliminary injunction affidavit Proposed Order.

Date		Proceedings
1974		
Jan 29		Mailed notice to the three judges court.
30	13.	Filed notice cont. hrg. on plts. mot. for prel. inj. fr. Feb. 8, 74 to Wed, Feb. 20, 74, 2:00 PM.
Feb 1	14.	Filed affidavit of H. T. Chang in support of mo for continuance of hrg.
1		Made and mailed notice to 3 judge court.
5	15.	Filed Withdrawal of counsel Fred h. Altshuler as counsel for ptfs in this action.
Feb 7	16.	Filed Stip for shortening time for notice of mo and to have case heard upon cross-mos for summ judg't. Hrg Feb 20, 1974 @2 p.m.
Feb 11	17.	Filed Pltf's mo for summ judg't.
	18.	Filed Pltf's mo to consolidate hrg on prelim injun with tr on the merits. Hrg Feb 20, 1974 @2 p.m.
11	19.	Filed notice and mo to dism or for summ judg't & Proposed Order.
	20.	Filed Pltf's memo of pts and auths in support of mo for summ judg't and in reply to deft's opposition memo.
	21.	Filed Defts notice of mo to dism or for summ judg't & Proposed ord. Hrg Feb 20, 1974 @2 p.m. copies mail to Judge East, Browning, & ACW.
Feb 15	22.	Filed deft's supp'l memo in support of deft's mot to dismiss or for summary judt.
Feb 20		Min Order Pltff's Prel. Inj., Def's Summ/ Judgt., Def's Dismissal All Submitted (ACW)

Date		Proceedings
1974		
Mar 22	23.	Filed Ord Granting Pltfs' Mo for Sum'ry Judgmt., to wit. *Order*

Accordingly, IT IS ORDERED that jurisdiction is conferred upon this Court by 28 U.S.C. § 1331; and

IT IS FURTHER ORDERED that 42 U.S.C. §§ 416(c) (15) and (e) (2) are declared invalid because they violate the Due Process Clause of the Fifth Amendment to the United States Constitution; and

IT IS FURTHER ORDERED that this action is certified as a class action pursuant to F.R.Civ.P. Rule 23, and that the class consists of all otherwise eligible surviving spouses and stepchildren of deceased wage earners heretofore disqualified from receipt of widow's and children's Social Security survivors' benefits by operation of 42 U.S.C. §§ 416(c) (5) and (e) (2); and

IT IS FURTHER ORDERED that defendants' motion for summary judgment and defendants' motion to dismiss the complaint are denied; and

IT IS FURTHER ORDERED that defendants, their agents, successors and employees are permanently restrained and enjoined from denying benefits to plaintiffs and the class they represent by reason of the nine month durational marriage requirement embodied in 42 U.S.C. §§ 416(c) (5) and (e) (2), and are ordered to provide benefits, from the time of original entitlement, to plaintiffs and the class they represent, provided said plaintiffs and class are otherwise fully eligible to receive said benefits; and

Date		Proceedings
1974		
Mar 22		IT IS FURTHER ORDERED that defendants shall provide notice of this decision to all present members of the class by mailing such notice to each member of the class within ninety days of the filing of this order; and IT IS FURTHER ORDERED that said notice be approved by the convening Judge before it is mailed to the members of the class and that the cause be remanded to the convening Judge for such further orders as may be appropriate. Dated: Mar. 22, 1974 /s/ James R. Browning U. S. Circuit Judge /s/ William G. East U. S. District Judge /s/ Albert C. Wollenberg U. S. District Judge
Apr 16	24.	Entered Judgment per ord of 3-22-74. (filed 4-15-74) (ACW, East, and Defts to reimburse pltfs counsel the $15 filing fee. (Browning. Mailed Clerk's not of entry of judgment to parties of record.
Apr 25	25.	Filed Defts's Not of Mo For Stay of Enforcement of Judgmt and Reconsideration of Judgmt and Reconsideration of Judgmt. Pts & Auths; Affidavit and proposed orders. (No dates)
May 9	26.	Filed Ord Denying Motions For Stay of Judgmt and for Reconsideration of Judgmt. (ACW)

Date		Proceedings
1974		
May 15	27.	Filed Notice of Appeal to Supreme Court of the United States by defendants.
May 15	28.	Filed Defts-appellants' Affidavit of Service re notice of appeal.
May 16		Mailed Clerks Notice of filing an appeal to parties of record.
May 22	29.	Filed Designation of record by appellant and appellees.
May 22	30.	Filed Pltfs letter to Court. (dated 3-7-74) from Legal Aid Society.
June 24		Made and mailed record on appeal to the Supreme Court
July 1	32.	Filed receipt from the Supreme Court for the record on appeal
July 1	32.	Filed Order from the Supreme Court RE Judgt. stayed only to the extent that it orders * * *
July 8	33.	Filed C.C. of Ord from Supreme Court of U.S. that the judgmt of the USDC is stayed only to the extent that it orders payment of any benefits and sending any not to members of the class pending timely docketing of an appeal. Etc. (See file)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Filed October 19, 1973]

C. A. No. 73 1863 ACW

CONCETTA SALFI, ET AL., PLAINTIFFS

vs.

CASPAR WEINBERGER, ET AL., DEFENDANTS

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

Upon the motion of plaintiff for leave to proceed in forma pauperis without prepayment of fees and costs, good cause appearing therefore:

IT IS ORDERED that said motion be and hereby is GRANTED and the plaintiff may proceed herein without prepayment of fees and costs.

DATED: Oct. 19, 1973.

/s/ Robert F. Peilham
Judge
United States District Court

[Filed October 19, 1973]

COMPLAINT

REVIEW OF ADMINISTRATIVE ACTION

[JURISDICTION]

1. This is an action to invalidate the provisions of 42 U.S.C. § 416(c) and (e)* which deny widow's and children's Social Security benefits on the basis of a conclusive presumption that, if the deceased wage earner did not live nine months after marriage, the marriage was a sham entered into solely in expectation of his death. Jurisdiction is conferred upon this Court by the Due Process Clause of the Fifth Amendment, by Title 28 U.S.C. §§ 1331, 1334, 1361, 2201 and 2202 and 5 U.S.C. 702.

2. The value of each of the individual pensions in controversy herein exceeds $10,000.00.

[PARTIES]

3. Plaintiffs CONCETTA SALFI and DOREEN A. KALNINS, mother and daughter, are citizens of the United States and residents of the State of California within the judicial district of this Court.

4. Defendant SOCIAL SECURITY ADMINISTRATION (SSA) is a sub-agency of the United States Government. Defendant CASPAR WEINBERGER is the Secretary of the DEPARTMENT OF HEALTH, EDUCATION AND WELFARE (HEW). HEW is the parent agency of the defendant SSA.

5. Defendant FERNANDO E. C. DeBACA is the director of HEW Region Nine. Defendant JOHN F. RICHARDSON is the Commissioner of the defendant SOCIAL SECURITY ADMINISTRATION for Region Nine. The headquarters of SSA and HEW Region Nine

* The challenged provisions are set out, along with the provisions of § 416(k)(1)(A), as Exhibit A to this Complaint.

are situated within the judicial district of this Court and Defendant DeBACA and RICHARDSON reside within said district.

6. Each of the individual defendants herein is sued for acts or omissions committed under color of legal authority and in his official capacity as an officer and employee of the United States and of the specified agencies thereof.

[CLASS ALLEGATIONS]

7. Plaintiffs bring this case for themselves and for all those similarly situated pursuant to Rule 23, F.R. Civ. P. The class thus represented includes all widows and stepchildren of deceased wage earners who are denied widow's or children's insurance benefits because the wage earner died within nine months of his marriage to the applicant or (in case of a stepchild) the applicant's mother. This class is so numerous that joinder of all its members is impracticable, but the questions of law and fact raised in this action are common and equally applicable to all members of the class. Pursuant to 42 U.S.C. § 416(c) and (e), defendants have refused to provide benefits to any member of the class on grounds applicable to all members thereof, making appropriate declaratory and injunctive relief for the entire class. An adjudication of this matter as a class action is necessary to forestall and foreclose the possibility of innumerable different determinations in discrete individual lawsuits brought to compel the payment of benefits. The claims of plaintiffs clearly exemplify those of the other members of the class and plaintiffs are able adequately to represent the interests of the class as a whole.

8. Plaintiffs seek convocation of a special three-judge district court as provided by 28 U.S.C. 2284. This is necessary since plaintiffs challenge the constitutionality, on its face, of Title 42 U.S.C. § 416(c) and (e), and seek both interlocutory and permanent injunctive relief to restrain the enforcement, operation and execution thereof.

[OPERATION OF THE CHALLENGED LEGISLATION]

9. Title 42 U.S.C. § 416(c)(5) and (e)(2) establishes what is in effect a conclusive presumption that any marriage contracted within nine months of the death of the deceased wage earner was a sham entered into simply to obtain Social Security benefits upon his death. Conclusively presuming that any marriage of less duration was entered into in expectation of the wage earner's death, these statutes define the deceased wage earner's spouse as not a "widow" and her child as not a "child" of the deceased unless he lived at least nine months after marriage. The harshness of the challenged statutes is mitigated (and their purpose highlighted) by § 416(k)(1)(A).* This provides that eligibility exists notwithstanding the provisions of the challenged statute if the marriage lasted at least three months and the wage earner's death was accidental—unless at the time of the marriage the wage earner "could not reasonably have been expected to live for nine months."

[FACTUAL CIRCUMSTANCES OF THE INDIVIDUAL PLAINTIFFS]

10. Plaintiff SALFI and her husband, the late Londo L. Salfi, were married on May 27, 1972. He died on November 21, 1972. Plaintiffs' application for mother's and child's insurance benefits was denied on March 15, 1973, and when reconsidered, that denial was confirmed on September 5, 1973. Sole grounds for the denial was that plaintiff SALFI and her husband had been married only five months and 25 days before his death rather than the nine months required by the challenged statutes. But for the operation of the challenged provisions Plaintiffs would have been eligible for the benefits they claimed. True copies of the certificates of marriage and death, and of the reconsideration decision, are attached hereto as Exhibit B, C, and D, respectively, and incorporated herein as if set out verbatim.

---

* Set out in Exhibit A.

11. Plaintiff SALFI was given no opportunity to prove the truth as to her husband's health and the expectations entertained regarding it at the time of marriage—those facts being contained in the affidavit attached hereto as Exhibit E and incorporated herein as if set out verbatim. Briefly summarized, those facts are: that Mr. Salfi's death from heart failure was entirely unexpected and unforeseen; that Mr. Salfi was in sound health both at the time of the marriage and in the more than 12 months previous thereto during which they courted; that Mr. Salfi was an active and, to all appearances, perfectly healthy man of 52 years at the time of marriage; that routine medical examinations over the past several years showed Mr. Salfi to be in good health with an expectancy (actuarally determined) of another 21 years of life; that plaintiff and Mr. Salfi were married not in contemplation of his death, but because of their mutual love and need for each other and with the expectation of living the remaining years of their lives together.

[LEGAL ALLEGATIONS]

12. The operation, enforcement, and execution of 42 U.S.C. § 416(c)(5) and (e)(2), have deprived and continue to deprive, plaintiffs of rights, privileges and immunities guaranteed and secured to them by the Constitution of the United States. Specifically:

(a) Plaintiffs have been denied the opportunity to prove salient facts regarding their eligibility by the operation of an unconstitutional conclusive presumption;

(b) Plaintiffs have been arbitrarily, capriciously and discriminatorily denied widow's and children's benefits available to identically situated mothers and children where the deceased wage earner happened to live more than nine months after the marriage;

(c) Plaintiffs have been arbitrarily, capriciously and discriminatorily denied widow's and children's benefits available to identically situated mothers and children where the deceased wage earner happened to live more than three months after the marriage and died by accidental means.

[SECTION 1985 ALLEGATION]

13. The individual and agency defendants have acted in concert with each other and with various of their employees and/or subordinants to deny to plaintiffs and their class alone the full and equal opportunity to prove in a due process hearing the pertinent facts as to their eligibility for Social Security benefits. As a result of such joint and concerted action by defendants and their subordinants and/or employees, plaintiff SALFI has been injured and deprived of property in benefits to the value of $181.70 per month while plaintiff KALNINS has similarly been injured and denied benefits to the value of $181.70 per month.

[EXHAUSTION OF REMEDIES]

14. Plaintiffs have fully and fairly presented the facts of their claims for benefits to their district Social Security Office and, upon denial, to the Regional Office for reconsideration. The latter's reconsideration decision (Exhibit D) correctly finds the facts, all of which are readily determinable by resort to official records of marriage and death. Plaintiffs have no quarrel either with the facts as found by the SSA or with the interpretation or application of the relevant law to deny plaintiffs' claims. There remain no factual matters to be determined and the only issue now in question is the constitutionality of the challenged statute—an issue which is beyond HEW's competence or jurisdiction to resolve.

[IRREPARABLE INJURY; NO ADEQUATE AT LAW]

15. Plaintiffs are presently being denied benefits to which they are entitled—benefits which alone, in view of the death of the family bread winner, can provide them the necessities of life. Thus plaintiffs are suffering and will continue to suffer irreparable injury unless this Court intervenes to enunciate and enforce their constitutional rights. Plaintiffs have no adequate remedy at law in that: (a) to obtain the benefits required by suits for

damages would require an infinite succession of litigation; and (b) the constitutional rights of which they are being deprived are not compensable in money damages.

[DECLARATORY JUDGMENT]

1. There is an actual and present controversy between plaintiffs and defendants in that plaintiffs contend that 42 U.S.C. § 416(c)(5) and (e)(2) are unconstitutional as presently written while defendants deny and dispute this. Therefore, plaintiffs desire, pursuant to 28 U.S.C. 2201 and 2202, a declaration of their and defendants' rights, privileges and duties and a declaration that the nine month conclusive presumption included in said statute is unconstitutional in that:

(a) It denies plaintiffs the opportunity to prove the salient facts regarding the eligibility by the operation of an unconstitutional conclusive presumption;

(b) It arbitrarily, capriciously and discriminatorily denies plaintiffs widow's and children's benefits available to identically situated mothers and children where the deceased wage earner happened to live more than nine months after their marriage;

(c) It arbitrarily, capriciously and discriminatorily denies plaintiffs widow's and children's benefits available to identically situated mothers and children where the deceased wage earner happened to live more than three months after the marriage and died by accidental means.

WHEREFORE, plaintiffs respectfully request relief as follows:

1. That a special three-judge panel be convened to hear this matter as provided in 28 U.S.C. 2284;

2. That this matter be certified as a class action pursuant to F.R. Civ. P. 23;

3. For declaratory relief as set out in the body of the complaint;

4. For mandatory and/or injunctive relief restraining defendants from denying widow's and children's benefits to plaintiffs and those similiarly situated simply because

the duration of the marriage was less than nine months required in 42 U.S.C. § 416(c)(5) and (e)(2) and ordering defendants to provide benefits, or an opportunity for a hearing on the genuineness of their status, to plaintiffs and all those similarly situated;

5. For damages or sums due and owing equivalent to the amount of benefits to which plaintiffs became entitled as of the date of said entitlement;

6. For attorneys' fees;

7. For costs of suit and such other relief as shall be necessary and proper.

DATED:

Respectfully submitted,

DON B. KATES JR.
BRUCE N. BERWALD
CARL L. MCCONNELL
FRED H. ALTSHULER
JOHN GANT
ALBERT H. MEYERHOGG
ELAINE D. CLIMPSON

Attorneys for Plaintiffs

By /s/ Bruce N. Berwald
BRUCE N. BERWALD

/s/ Don B. Kates Jr.
DON B. KATES JR.

VERIFICATION

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN MATEO)

I, CONCETTA SALFI, being duly sworn, state as follows:

I am the plaintiff in this action; I have read the foregoing Complaint and know the contents thereof; and I certify that the same is true to my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

Executed on October 18, 1973, at Redwood City, California.

/s/ Concetta Salfi
CONCETTA SALFI

SUBSCRIBED and sworn to before me this 18th day of October, 1973.

/s/ Mary Hannah
Notary Public

[OFFICIAL SEAL]

Mary Hannah, Notary Public—California in San Mateo County. My Commission Expires September 28, 1976.

Exhibit A to the Complaint contained the text of statutes now reproduced in pertinent part in the appendix to the Appellants' Brief.

Exhibit B to the Complaint is a Certificate of the Registry of Marriage filed at the Recorder's Office of San Mateo County, California, certifying the marriage of Concetta Kalnins to Londo Salfi on May 27, 1972.

EXHIBIT "D"

HEALTH, EDUCATION, AND WELFARE
Social Security Administration

RECONSIDERATION DETERMINATION

Payment Center—San Francisco California

Name of Wage Earner or Self-Employed Person—Londo L. Salfi

Name of Claimant—Concetta Salfi
Concetta Salfi for Doreen A. Kalnins

District Office or Branch Office—San Mateo, California

Social Security Claim No.—571-03-73[illegible]

Type of Claim—Mother's Insurance Benefits
Child's Insurance Benefits

Determination:

Concetta Salfi filed an application for mother's insurance benefits and on application for child's insurance benefits on behalf of Doreen A. Kalnins on December 8, 1972. The applications were denied because Mrs. Salfi and the wage earner were not married for nine months prior to the wage earner's death. On April 25, 1973, the claimant requested reconsideration.

The issue to be resolved is whether the claimants are entitled to mother's and child's insurance benefits. This depends on whether Mrs. Salfi and the wage earner were married for nine months prior to the wage earner's death.

Section 202(g) of the Social Security Act provides that in order to become entitled to mother's insurance benefits a claimant must be the widow of the wage earner as defined in section 216(c) of the Act.

Section 216(c) of the Act defines the term "widow" as the surviving wife of an individual, but only if one of the following requirements is met: (1) she is the natural mother of his child; (2) she legally adopted his

child while she was married to him and while the child was under the age of eighteen; (3) he legally adopted her child while she was married to him and while the child was under the age of eighteen; (4) she was married to him at the time both of them legally adopted a child under the age of eighteen; (5) she was married to him for a period of not less than nine months immediately prior to the day on which he died; or (6) she was entitled or potentially entitled to wife's, widow's, parent's, or childhood disability benefits under the Social Security Act, or widow's child's, or parent's insurance annuity under the Railroad Retirement Act.

Section 404.1114(a) of Regulations No. 4 of the Social Security Administration provides that the requirement that the widow be married to the wage earner for a period of not less than nine months prior to his death shall be deemed to be satisfied if the widow was married to the wage earner for a period of not less than three months prior to his death, and the wage earner's death was either accidental (as defined in paragraph (b) of this section) or in the line of duty while he was a member of a uniformed service serving on active duty.

Section 404.1114(b) of the Regulations provides that the death of an individual is accidental if the individual receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives the bodily injuries. Death from natural causes is not an accidental death.

Section 202(d) of the Act provides that in order to become entitled to child's insurance benefits, a claimant must be the child of the wage earner as defined in section 216(e) of the Act.

Section 216(e) of the Act defines the term "child" as the child, legally adopted child, grandchild, or stepchild who has been a stepchild not less than nine months immediately prior to the wage earner's death.

Section 404.1114(a) of the Regulations also provides that the requirement that a stepchild be a stepchild not less than nine months shall be deemed to be satisfied

if the stepchild was a stepchild for not less than three months and the wage earner's death was accidental or in the line of duty.

Mrs. Salfi filed an application for mother's insurance benefits on December 8, 1972. She stated on her application that she married the wage earner on May 27, 1972, and that the wage earner died on November 21, 1972. She submitted a marriage certificate and a death certificate verifying these dates. Mrs. Salfi also filed an application for child's insurance benefits on December 8, 1972. She stated that Doreen A. Kalnins was the stepchild of the wage earner and had never been legally adopted by him.

The wage earner's death certificate shows that his death was due to arteriosclerotic heart disease and that the immediate cause of his death was "acute myocardial infarct." Mrs. Salfi signed a statement indicating that she agreed that the wage earner died from natural causes.

Mrs. Salfi was married to the wage earner for a period of less than nine months. Mrs. Salfi does not meet any of the requirements in section 216(c) of the Act. Although she was married to the wage earner for more than three months, the wage earner's death was not accidental or in the line of duty. The wage earner died of natural causes, rather than from bodily injuries received through violent, external, and accidental means. Mrs. Salfi does not qualify as the wage earner's widow and cannot become entitled to mother's insurance benefits.

Since Mrs. Salfi was married to the wage earner less than nine months before he died, her daughter, Doreen, was a stepchild for less than nine months. Although she was a stepchild for more than three months, the wage earner's death was neither accidental nor in the line of duty. Doreen cannot, therefore, qualify as the wage

earner's stepchild and is not entitled to child's insurance benefits. The initial determination is affirmed.

_____

Chief, Reconsideration Branch

September 5, 1973
Date

cc: Lorna Siepser, Attorney
2221 Broadway
Redwood City, California 94063

EXHIBIT "E"

AFFIDAVIT OF CONCETTA SALFI

I, CONCETTA SAIFL, being duly sworn, hereby make affidavit to the following:

I married LONDO SALFI on May 27, 1972. We had known each other for over a year prior to that time, and had courted continuously for approximately one year prior to our marriage. We often went dancing at various clubs such as the Moose Club and the American Legion Hall. Shortly after the first of the year, 1972, we decided to marry, and announced this to our family and friends.

During the time that I knew Londo Salfi, he appeared to be in sound health, and there was no indication whatsoever that he had any heart problems. In fact, it was a standing joke between us that he was taking on a liability, in that I have been classified as totally disabled by the Social Security Administration, as a result of a heart condition. Londo and I entered into our marriage with the full expectation that we would spend the rest of our lives together, and our marriage was based upon love, not upon any expectation of receiving survivor's benefits. At no time prior to June 13, 1972 did either my husband or I have any inkling whatsoever that he had a heart condition. In fact, until the condition was diagnosed, we both assumed that it was merely indigestion.

I make this affidavit upon my best information and belief, and with the full knowledge that it is the complete truth, so far as I know.

/s/ Concetta Salfi
CONCETTA SALFI

Subscribed and sworn to before me this October 18, 1973.

/s/ Mary Hannah
Notary Public

[OFFICIAL SEAL]

Mary Hannah, Notary Public—California, Principal Office in San Mateo County. My Commission expires September 28, 1967.

[Filed November 19, 1973]

NOTIFICATION AND CERTIFICATION

TO: THE HONORABLE RICHARD H. CHAMBERS, CHIEF JUDGE, COURT OF APPEALS, NINTH CIRCUIT.

Pursuant to the provisions of 28 U.S.C. §§ 2282 and 2284 you are notified that the complaint now pending in the above entitled cause challenges the constitutionality of one or more sections of the Social Security Act, as amended, 42 U.S.C. §§ 401 et seq.

I certify that I have examined the complaint and that, in my opinion, this challenge requires the formation of a District Court of three judges, composed as designated in § 2284.

Dated: November 19, 1973.

/s/ Albert C. Wollenberg
United States District Judge

[Filed November 27, 1973]

ORDER DESIGNATING UNITED STATES CIRCUIT JUDGE AND UNITED STATES DISTRICT JUDGES PURSUANT TO APPLICABLE STATUTES, UNITED STATES CODE

Whereas, in my judgment the public interest so requires, I, pursuant to the provisions of the applicable statutes, United States Code, do hereby designate and appoint the

HONORABLE OLIVER D. HAMLIN,

United States Circuit Judge for the Ninth Circuit; and the

HONORABLE ALBERT C. WOLLENBERG,

United States District Judge for the Northern District of California; and the

HONORABLE WILLIAM G. EAST,

United States District Judge for the District of Oregon, to hold district court for the Northern District of California at a time and place to be agreed upon by said judges, and to hear and determine the following cause:

CONCETTA SALFI, et al., Plaintiffs, v. CASPAR WEINBERGER, in his capacity as Secretary of the Department of Health, Education and Welfare; et al., Defendants.
No. C-73 1863 ACW

and all motions and proceedings therein.

DATED: November 23, 1973.

/s/ Richard H. Chambers
Chief Judge, Ninth Circuit

cc: Judge Hamlin
Judge Wollenberg
Judge East
Clerk, NCal.
Clerk, Ore.
Clerk, 9th Cir.

[Filed December 17, 1973]

MOTION FOR PRELIMINARY INJUNCTION

Come now Plaintiffs, Concetta Salfi and Doreen A. Kalnins, and move the court for a preliminary injunction in the above-entitled case enjoining and restraining defendants, CASPAR WEINBERGER, in his capacity as Secretary of the Department of Health, Education and Welfare; UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; FERNANDO E. C. DeBACA, in his capacity as Director of Region Nine of United States Department of Health, Education and Welfare; JOHN F. RICHARDSON, in his official capacity as Commissioner for Region Nine of the Social Security Administration; and SOCIAL SECURITY ADMINISTRATION; their agents, servants, employees and attorneys, from denying plaintiffs and the class they represent, widows' and children's benefits to which they are entitled under the Social Security Act, simply because the duration of the marriage to the deceased wage-earner was less than the nine months required in 42 U.S.C. § 416(c)(5) and (e)(2) and ordering defendants to provide benefits, or an opportunity for a hearing on the genuineness of their status, to plaintiffs and all those similarly situated, and further move that the trial of this action on the merits be advanced and consolidated with the hearing of this motion for preliminary injunction.

The grounds in support of this motion are as follows:

1. Although phrased as a definition of eligibility, the challenged statutes represent a conclusive presumption violative of the Due Process Clause of the Fifth Amendment.

2. The presumption here challenged is neither the best nor the only means of excluding fraudulent applications and the use of such presumption constitutes an overbroad classification which arbitrarily and unequally denies benefits to plaintiffs and their class while granting them to others whose situations are not meaningfully distinguishable.

Unless restrained, defendants will continue to deny plaintiffs and their class benefits to which they are otherwise entitled, based upon the challenged statutes.

Immediate and irreparable injury, loss and damage will result to plaintiffs and their class by reason of the continued denial by defendants, as more particularly appears in the verified complaint filed herein. Plaintiffs have no adequate remedy at law.

If this preliminary injunction be granted, the injury, if any, to defendant herein, if the final judgment be in their favor, will be inconsequential.

Dated: 12/13/73

/s/ Bruce N. Berwald
BRUCE N. BERWALD
Attorney for Plaintiffs
2221 Broadway
Redwood City, CA 94063

PROOF OF SERVICE

I hereby certify that on the 14th day of December, 1973, I served a copy of the attached Motion for a Preliminary Injunction upon the Attorneys for Defendants by depositing said copy in the U.S. mail, postage prepaid, addressed to:

U.S. Attorney's Office
Federal Building
450 Golden Gate Ave.
San Francisco, CA 94102

/s/ Jennie R. Giannini
Jennie R. Giannini

[Filed February 7, 1974]

STIPULATION FOR SHORTENING TIME FOR NOTICE OF MOTION AND TO HAVE CASE HEARD UPON CROSS-MOTIONS FOR SUMMARY JUDGMENT

IT IS HEREBY STIPULATED, subject to the approval of the Court, by and between plaintiffs and defendants, through and by their respective counsel, as follows:

1. The 21 day time period for noticing motions imposed by Local Rule 114(b) be and hereby is shortened, in order to allow plaintiffs' Motion for Summary Judgment, plaintiffs' Motion to Consolidate the Hearing on Preliminary and Permanent Injunctive Relief, defendants' Cross-motion for Summary Judgment, and defendants' Motion to Dismiss to be heard on February 20, 1974, at 2:00 P.M., the time set for hearing upon plaintiffs' Motion for Preliminary Injunction;

2. There are no genuine issues of material fact in dispute concerning the adjudication of the constitutionality of the challenged provision of 42 U.S.C. § 416, and that this three-judge panel may finally determine the constitutionality of said challenged provisions on the basis of the facts set out in the complaint and affidavits heretofore filed;

3. Trial on the issue of the permanent injunction against the enforcement of the challenged provisions of 42 U.S.C. § 416 may be consolidated with and in the pending hearing re preliminary injunction. Thereafter, all questions not relating to the injunction against the enforcement of the challenged provisions may be referred to the convening judge for determination.

Dated: February 5, 1974.

Respectfully submitted,

PLAINTIFFS

By: /s/ Bruce N. Berwald
BRUCE N. BERWALD
Attorney for Plaintiffs

Dated: February 7, 1974.

DEFENDANTS

By: /s/ Howard Chang
HOWARD CHANG
Attorney for Defendants

[Filed February 11, 1974]

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby move the Court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiffs' favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law.

This Motion is based upon:

(a) Plaintiffs' complaint and the Exhibits attached thereto, including Plaintiff Concetta Salfi's Affidavit;

(b) Plaintiffs' Memorandum of Points and Authorities in Support of Application for Preliminary Injunction.

(c) Stipulation for Shortening Time for Notice of Motion and to Have Case Heard Upon Cross-Motions for Summary Judgment.

Dated: February 7, 1974.

/s/ Bruce N. Berwald
BRUCE N. BERWALD
Attorney for Plaintiffs

(PROOF OF SERVICE BY MAIL—1013,a 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the county of Santa Clara I am over the age of eighteen and not a party to the within above entitled action: my business address is: 2221 Broadway, Redwood City, CA. On February 7, 1974, I served the within Plaintiffs' Motion to Consolidate Hearing on Preliminary Inj. With Trial on the Merits and Plaintiffs' Motion for Preliminary Injunction on the defendants' attorney in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Redwood City CA addressed as follows:

Howard Chang
U.S. Attorney's Office
450 Golden Gate Avenue
San Francisco, CA 94102

I, LESLIE ROBINSON, certify (or declare), under penalty of perjury,* that the foregoing is true and correct. Executed on February 7, 1974 at Redwood City, California.

/s/ Leslie Robinson

* Proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

[Filed February 11, 1974]

PLAINTIFFS' MOTION TO CONSOLIDATE HEARING ON PRELIMINARY INJUNCTION WITH TRIAL ON THE MERITS

Plaintiffs hereby move the Court as follows:

1. That, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, it consolidate the hearing on Plaintiffs' Motion for Preliminary Injunction with a trial on the merits at the date and time scheduled for said hearing, to wit, February 20, 1974, at 2:00 p.m.; for the reason that, since there is no genuine issue of material fact, this matter may and ought to be determined finally upon the merits.

Dated: February 7, 1974.

/s/ Bruce N. Berwald
BRUCE N. BERWALD
Attorney for Plaintiffs

[Filed February 11, 1974]

NOTICE AND MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

PROPOSED ORDER

NOTICE AND MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

To the plaintiffs and their attorneys:

BRUCE N. BERWALD
DON B. KATES, JR.
CARL L. McCONNELL
San Mateo County Legal Aid Society
2221 Broadway Street
Redwood City, California 94063

FRED H. ALTSHULER
JOHN GANT
GRLA—Cooperative Legal Services Center
1212 Market Street
San Francisco, California 94102

ALBERT H. MEYERHOGG
ELAINE D. CLIMPSON
California Rural Legal Assistance
1212 "F" Street
Marysville, California 95901

PLEASE TAKE NOTICE that on Wednesday, February 20, 1974, at 2:00 p.m., the date presently scheduled for the hearing on plaintiffs' motion for preliminary injunction and summary judgment, or as soon thereafter as counsel may be heard, the undersigned attorneys for the defendants will move the Court before the Honorable Judges James R. Browning, William G. East and Albert C. Wollenberg, in Courtroom No. 7, 19th Floor, United States Court House and Federal Building, 450 Golden Gate Avenue, San Francisco, California, to dismiss the Complaint and action or, in the alternative, for summary judgment in favor of the defendants.

This motion is made pursuant to Rules 12(b)(1), 12(b)(6) and 56 of the Federal Rules of Civil Procedure, and is based upon the present notice, the memorandum in opposition to plaintiffs' motion for preliminary injunction, filed on January 29, 1974, and the affidavit attached thereto, the Stipulation Shortening Time, and on such further grounds as may be offered at the hearing on this motion.

An appropriate form of order is submitted herewith in compliance with Local Rule 114(d).

Dated: February 11, 1974.

JAMES L. BROWNING, JR.
United States Attorney

By: /s/ Howard T. Chang
HOWARD T. CHANG
Assistant United States Attorney
Civil Division

Attorneys for Defendants

[Filed April 23, 1974]

NOTICE AND MOTION FOR STAY OF ENFORCEMENT OF JUDGMENT AND RECONSIDERATION OF JUDGMENT

POINTS AND AUTHORITIES
AFFIDAVIT

PROPOSED ORDERS

NOTICE AND MOTION FOR SUSPENSION AND STAY OF INJUNCTION

To the plaintiffs and their respective attorneys as indicated on the attached Certificate of Service by Mail:

PLEASE TAKE NOTICE that on ———— at ————, as scheduled by the Court, the undersigned attorneys for the defendants will move the Court before the Honorable James R. Browning, William G. East and Albert C. Wollenberg, Judges, in the United States Court House, Court Room No. 7, 19th Floor, 450 Golden Gate Avenue, San Francisco, California, to stay the enforcement of the judgment entered April 16, 1974, pending appeal and for reconsideration of said judgment.

These motions are made pursuant to Rules 62 and 59 of the Federal Rules of Civil Procedure and are based upon the present notice, the attached memorandum of points and authorities and affidavit, the pleading filed heretofore in this action and any additional grounds presented at the hearing on these motions.

The defendants request that a stay of enforcement of judgment be granted pending the expiration of the 30-day period for direct appeal to the United States Supreme Court, pursuant to 28 U.S.C. § 1252 and 1253, and in the event that appeal is sought by the defendants for the duration of such appeal proceedings. The reasons for granting a stay of judgment are as follows:

(1) The likelihood of the defendants prevailing on the merits on appeal;

(2) Irreparable injury will result to the defendants unless the stay is granted;
(3) No substantial harm will result to other interested persons; and
(d) The public interest is in favor of the defendants.

The motion for reconsideration should be granted and an Order dismissing the Complaint and action or, in the alternative, granting summary judgment in favor of the defendants should be issued on the following grounds:

(1) Jurisdiction under 28 U.S.C. § 1331 is lacking;
(2) No Determinative Facts Are Presumed by 42 U.S.C. §§ 416(c)(5) and (e)(2);
(3) The burden of identifying and providing notice to all members of the Class is improperly imposed on the defendants; and
(4) The granting of benefits retroactively is barred by sovereign immunity.

An Appropriate form of Order is attached hereto in compliance with Local Rule 114(d).

JAMES L. BROWNING, JR.
United States Attorney

By: /s/ Howard T. Chang
HOWARD T. CHANG
Assistant United States Attorney

Attorneys for Defendants

SUPREME COURT OF ~~APPEALS~~ The United States

No. A-1211

ORDER

UPON CONSIDERATION of the application of the Solicitor General,

IT IS ORDERED that the judgment of the United States District Court for the Northern District of California in case No. 73-1863 ACW be, and the same is hereby stayed only to the extent that it orders sending notice and payment of benefits to members of the class from the date of original entitlement pending reconsideration of the application when the memorandum of appellees is received.

IT IS FURTHER ORDERED that benefits be paid to the named appellees in accordance with the order of the United States District Court.

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 21st day of June, 1974.

A true copy MICHAEL RODAK, JR.
Test:

Clerk of the Supreme Court of the United States

By /s/ Francis J. Lawson
Deputy

SUPREME COURT OF THE UNITED STATES

No. 74-214

CASPAR WEINBERGER, Secretary of Health, Education and Welfare et al., APPELLANTS

v.

CONCETTA SALFI et al.

APPEAL from the United States District Court for the Northern District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 11, 1974

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 565837 65